IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

NATALIE MICHELLE WHITE §

VS. § CIVIL ACTION NO. 2:08-CV-455

DIRECTOR, TDCJ-CID §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Natalie Michelle White, a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge recommends denying the petition.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. The petitioner filed objections to the magistrate judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. Federal habeas review is not a vehicle for defendants and federal courts to second-guess reasonable decisions made by state courts. *Renico v. Lett*, _U.S. _ , 130 S. Ct. 1855, 1862 (2010). Federal courts do not decide whether the state court determination was incorrect, but whether it was unreasonable, which is a substantially higher threshold. *Schriro v.*

Landrigan, 550 U.S. 465, 473 (2007). In this case, the state court's decision was not contrary to, nor did it involve an unreasonable application of, clearly established federal law. The state court's findings did not result in a decision based on an unreasonable determination of the facts in light of the evidence. Therefore, the petitioner is not entitled to relief.

Further, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a federal constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde v. Dretke, 362 F.3d 323, 328 (5th Cir. 2004); see also Barefoot v. Estelle, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that she should prevail on the merits. Rather, she must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-84; Avila v. Quarterman, 560 F.3d 299, 304 (5th Cir. 2009). Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

Here, the petitioner has not shown that any of the issues raised by her claims are subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further. The petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation. A certificate of appealability will not be issued.

So ORDERED and SIGNED this 19th day of March, 2012.

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE